

**IN THE SEYCHELLES COURT OF APPEAL**

**[Coram: S. Domah (J.A), A. Fernando (J.A), J. Msoffe (J.A)]**

**Civil Appeal SCA23 & 27/2014**

**(Appeal from Supreme Court Decision CS 230/2014)**

---

Marie-Claire Vadivello

Appellant

Versus

Francis Pillay

Respondent

---

Heard: 11 April 2017

Counsel: Mr. A. Derjacques for the Appellant

Mr. F. Ally for the Respondent

Delivered: 21 April 2017

**JUDGMENT**

A.Fernando (J.A)

1. The Appellant has filed this appeal against the judgment of the Supreme Court which made the following orders:
  - “(a) Specific performance on the defendant to execute the transfer deed of land parcel H 2259 in favor the plaintiff as prayed for in paragraph (i) in the prayer to the second amended plaint within three months from the date of this judgment subject to the payment of stamp duty and all other charges by the plaintiff.
  - (b) In the event the defendant fails to execute a transfer deed in favor of the plaintiff within a period of three months of this order as set out in (a) above, this judgment will stand as the transfer document in lieu of a transfer deed and I direct the Land Registrar to effect the registration of the transfer of the land title H 2259 in the name of plaintiff subject to the payment of stamp duty and all other charges by the plaintiff.
  - (c) That the defendant should pay damages to the plaintiff calculated from 1<sup>st</sup> August 2012 at the rate of SCR 4000 per month up to the date of this judgment and continuing damages at the rate of SCR 4000 per month and

(d) That the defendant shall pay the plaintiff a sum of SCR 20,000 as moral damages.

I award taxed costs in favor of the plaintiff.”

2. The Appellant has filed the following grounds of appeal:
  1. The Learned Trial Judge erred in ordering the Appellant to transfer parcel H2259 to the Respondent, or to order the judgment to be considered as a transfer in lieu, in that the parcel was not registered in the name of the Appellant at any time.
  2. The Learned Trial Judge erred in assuming that the Appellant and Respondent had entered into an agreement for the Appellant to sell parcel H2259 to the Respondent for R350,000.00 without:
    - a. Taking into consideration the fact that the parcel and house thereon were worth much more than that sum;
    - b. Taking into consideration that any agreement was subject to the Appellant being able to first purchase the parcel from SHDC.
  3. The Learned Trial Judge erred in allowing damages to the Respondent at the rate of R4000.00 per month from 1 August 2012.
  4. The Appellant has sought by way of relief that the appeal be allowed, that the judgment of the trial court be reversed and to dismiss the Respondent’s action, with costs.
3. The Respondent in his Notice of Cross Appeal has sought that the decision of the Supreme Court be varied and affirmed to the extent and in the manner that the underlying principles and approach in the trial Judge’s judgment are sound and should be affirmed except for the decision that the Appellant should pay the Respondent damages calculated from the 1<sup>st</sup> August 2012. It is the Respondent’s position that damages should have been calculated from the end of June 2000 as prayed for by him in his Plaintiff and has sought a judgment as follows:
  1. dismissing the appeal and affirming the judgment of the trial Judge except with regard to his decision that damages are to be calculated as from the 1<sup>st</sup> August 2012 rather than from the end of June 2000;
  2. that the cross-appeal be allowed and the decision of the Supreme Court be upheld but varied to the extent and in the manner set out in the grounds of cross-appeal; and

3. that the Appellant pays the costs in the Supreme Court and the Court of Appeal.
4. The Complaint on which the trial proceeded before the Supreme Court after two amendments, namely the Second Amended Complaint dated 11<sup>th</sup> of May 2013, reads as follows:

IN THE SUPREME COURT OF SEYCHELLES

Francis PILLAY  
Of Anse Aux Pins, Mahe

Plaintiff

AGAINST

Marie-Claire VADIVELLO  
Anse Etoile, Mahe

Defendant

CS. No. 230/2000

SECOND AMENDED COMPLAINT

1. At all material times the Defendant was the registered proprietor of a parcel of land with a house standing thereon situated at Anse Etoile, Mahe, Seychelles, comprised in land title number H 2259 (hereinafter the "Property").
2. By virtue of a written Promise of Sale between the Plaintiff and the Defendant made on the 12<sup>th</sup> May 2000 (hereinafter the "Agreement") the Defendant, in consideration of the sum of SR 350,000/-, promised to sell the Plaintiff the Property.
3. It was further agreed by the parties to the Agreement as follows:-
  - i. That the Plaintiff shall pay the Defendant on the signing of the Agreement a deposit of SR 100,000 (which sum was paid in full by the Plaintiff to, and receipt thereof acknowledged by, the Defendant on 12<sup>th</sup> May, 2000);
  - ii. That the aforesaid deposit would be forfeited to the Defendant in the event of the Plaintiff's failure to make good the whole consideration as agreed in the Agreement; and
  - iii. that the Plaintiff shall pay the aforesaid consideration not later than one week from the date of the execution of the Agreement.
4. The Plaintiff avers that he paid the whole of the above-referred consideration to the Defendant on 12<sup>th</sup> May, 2000.

5. The Plaintiff further avers that subsequent to the signing of the Agreement the Defendant signed a deed of transfer which on the Defendant's presentation to the Land Registrar for registration, the Land Registrar refused to stamp and register it on the grounds that a Caution under the Land Registration Act had been registered against the Property in favour of the Seychelles Housing Development Corporation. (hereinafter the "SHDC") pending the final determination of *SHDC v/s Marie Claire VADIVELLO – C.S. No. 174/2000*.
6. In spite of the fact that the Plaintiff had complied with his obligations under the Agreement namely by paying the consideration in full to the Defendant as agreed, the Defendant has up till now failed, refused or ignored to register the deed of transfer with the Land Registrar to effectively transfer the Property to the Plaintiff.
7. The Plaintiff avers that the Defendant must specifically perform her obligation under the Agreement and transfer the Property to the Plaintiff in that on the 1<sup>st</sup> August, 2012, the SHDC withdrew or discontinued the suit *SHDC v/s Marie Claire VADIVELLO – C.S. No. 174/2000* and as a result thereof all restriction, caution or inhibition prohibiting the registration of the transfer of the property to the Plaintiff no longer prohibit the Land Registrar to register and stamp the transfer document to transfer ownership and title to the Property to the Plaintiff and they ought to be removed.
8. On the basis of matters pleaded above the Plaintiff has suffered loss and damage and inconvenience more specifically moral damage in the sum of SR 100,000/- and loss of enjoyment of, and income from, the Property in the sum of SR 616,000/- representing loss of rent estimated at SR 4000/- from end of June, 2000 – end of February, 2013, (152 months) and continuing.

**WHEREFORE** the Petitioner prays this Honourable Court for a judgment as follows:

- i. an order of specific performance to compel the Defendant to transfer the Property, to the Plaintiff;
- ii. alternatively to prayer i hereof, an order that the judgment of this Court shall stand *in lieu* of a transfer document under the Land Registration Act in the event that the Defendant fails to comply with an order to execute the transfer document;

- iii. ordering and condemning the Defendant to pay Plaintiff damages in the sum of SR 716,000/- and continuing
- iv. Ordering the Defendant to pay cost of this action; and
- v. For such order and further relief as to this Court shall seem meet.

The averments in the Plaintiff set out succinctly the facts of this case.

5. We are surprised to note that the Appellant had not filed an Amended Defence to the 2<sup>nd</sup> Amended Plaintiff dated 11<sup>th</sup> May 2013, but had simply relied on his Amended Defence dated 16<sup>th</sup> October 2002 to the 1<sup>st</sup> Amended Plaintiff of 22<sup>nd</sup> February 2002.
6. The Amended Defence dated 16<sup>th</sup> October 2002 reads as follows:

IN THE SUPREME COURT OF SEYCHELLES

BETWEEN:

Francis Pillay

V/S

Marie Claire Vadivello  
(Anse Etoile, Mahe)

Plaintiff

1<sup>st</sup> Defendant

AND

The Land Registrar  
(herein rep by Mr. Gustave  
Dodin, of Kingsgate House, Victoria)

2<sup>nd</sup> Defendant

C . S No 230/2000

AMENDED DEFENCE

1. Paragraph 1 of the Plaintiff if admitted.
2. Paragraph 2 of the Plaintiff is admitted.
3. Paragraph 3 of the Plaintiff is admitted.
4. Paragraph 4 of the Plaintiff is admitted in that the agreed transfer was paid as evidenced in the said transfer and affidavit attached.

5. Paragraph 5 of the Plaintiff is admitted. Defendants, Notary Public sought to register the said transfer, between the above parties, which was refused and returned to the said Notary Public, by the Registrar of lands. The parties were duly informed.
6. Paragraph 6 of the Plaintiff is denied. The Defendant, through the said Notary, and the Plaintiff through Frank Elizabeth, in the firm Derjacques & Elizabeth and further, the Plaintiff through his second Attorney, Frank Ally, (Esq) attempted to register the transfer deeds with the Land Registrar.
7. Paragraph 7 of the Plaintiff is denied. Defendant has endeavoured through all avenues to obtain a transfer which has been repeatedly denied by the Registrar, and Caution by SHDC.
8. Defendant is unable to specifically perform her obligation to transfer.
9. Paragraph 9 of the Plaintiff is denied. Defendant avers that she acted bona fide, as a vendor, and was frustrated through the actions of the SHDC and the Registrar of lands. Defendant is not liable in law to Plaintiff.
10. Paragraph 10 of the Plaintiff is denied. The 1<sup>st</sup> Defendant is not liable in Law to the Plaintiff.
11. Paragraph 11 of the Plaintiff is denied in that the 1<sup>st</sup> Defendant is unable to lawfully perform as per the said transfer and moreover, the said transfer sum has been provisionally attached by the court.
12. Paragraph 12 of the Plaintiff is denied. The 1<sup>st</sup> Defendant is not liable in Law for the acts of the Registrar or the Court in Civil Side No. 174 of 2000.

WHEREFORE, Defendant prays this Honourable Court to be pleased to dismiss this Plaintiff with costs for the Defendant.

7. The averments in paragraphs 1 to 6 in the 2<sup>nd</sup> Amended Plaintiff are almost identical to the averments in paragraphs 1 to 6 in the 1<sup>st</sup> Amended Plaintiff, and thus we can place reliance on the answers to those averments in paragraphs 1 to 6 of the Amended Defence, which are admissions of those averments. The averments from paragraphs 8 onwards in the Amended Defence are answers to the 1<sup>st</sup> Amended Plaintiff. We note that the averments in paragraphs 1 to 6 in the 2<sup>nd</sup> and 1<sup>st</sup> Amended Plaintiffs, are identical to the averments in the Original Plaintiff, and the Appellant had admitted those averments when she filed her Original Defence.

8. The failure to file an Amended Defence to the 2<sup>nd</sup> Amended Plaintiff had been drawn to the attention of the Counsel for the Appellant, who was then the Defendant to the suit and a clarification sought from him by the learned Trial Judge as recorded in the proceedings of 20<sup>th</sup> June 2013. As per the record: “Mr. Derjaques informed me that he had not objected to the amended plaintiff and the hearing proceeded on the amended plaintiff and he did not intend filing an amended answer. Hence the matter was clarified.” (p. 60 of the Court of Appeal brief – The reference is to the 2<sup>nd</sup> Amended Plaintiff as per recorded proceedings). The Counsel for the Appellant had chosen of his own accord to act in the manner he did and he will have to face the consequences of his action.
  
9. The Appellant has not responded in his Amended Defence to the averments in paragraphs 7 and 8 of the 2<sup>nd</sup> Amended Plaintiff on which the trial had proceeded and we are compelled to take them as having being admitted. **Section 75 of the Seychelles Code of Civil Procedure** states:  
  
*“The statement of defence must contain a clear and distinct statement of the material facts on which the defendant relies to meet the claim. A mere general denial of the plaintiff’s claim is not sufficient. Material facts alleged in the plaintiff must be distinctly denied or they will be taken to be admitted.”* (emphasis added by us)
  
10. Paragraph 1 of the Second Amended Plaintiff referred to at paragraph 4 above has been admitted at paragraph 1 of the Amended Defence referred to at paragraph 6 above. As stated at paragraph 7 above, the Appellant had admitted both in his Original Defence and the Amended Defence that “At all material times the Defendant was the registered proprietor of a parcel of land with a house standing thereon situated at Anse Etoile, Mahe, Seychelles, comprised in land title number H 2259 (hereinafter the “Property”)”. This is sufficient to dismiss ground 1 of the appeal.
  
11. As regards ground 2 of appeal, the admissions in the Amended Defence of the averments in the Amended Plaintiff and the rest of the averments in the Amended Defence make it clear that it was not a case of assumption but a fact that the Appellant and the Respondent had entered into an agreement for the Appellant to sell parcel H2259 to the Respondent for R 350,000.00 This Agreement had been produced as P2 and the two receipts both dated 12<sup>th</sup> May 2000, pertaining to the payment of the said amount, namely SCR 100,000.00 and SCR 250,000.00, P9 and P10 respectively, had also been produced. A receipt for the sum of SCR 32,000 as payment of stamp duty by the Respondent to the Appellant’s Attorney had been produced as P11. The Appellant in an affidavit dated 18<sup>th</sup> March 2004 before the Supreme Court which is filed of record had sworn that: “In respect of a transfer of land parcel H 2259, by myself to the Plaintiff, the Seychelles Housing Development Corporation registered a ‘restriction’, in their favour....”. The Amended Defence did not contain any statements in relation to any of the facts referred to at (a) and (b) of ground 2 of appeal as required by section 75 of the Seychelles Code of

Civil Procedure, namely, “The statement of defence must contain a clear and distinct statement of the material facts on which the defendant relies to meet the claim”, and that is sufficient to dismiss ground 2 of appeal.

12. Ground 3 of appeal has to be dismissed as the averments in paragraph 8 of the Amended Plaintiff have not been denied by the Appellant in his Amended Defence as required by section 75 of the Seychelles Code of Civil Procedure and therefore are taken to be admitted. We further state that we agree with the learned Trial Judge when he states: “I hold that the defendant is liable to pay damages on the basis of loss of income from property only from the 1<sup>st</sup> August 2012...Having considered the uncontroverted evidence of the plaintiff (*Respondent*) on the issue of the possible receivable rent from the property I conclude that the plaintiff (*Respondent*) could reasonably expect a rent of SCR 4000 per month from the property.” The Appellant had not challenged the moral damages of SCR 20,000 that had been awarded to the Respondent.
13. The Respondent in his Notice of Cross Appeal has sought that the decision of the Supreme Court be varied to the extent that the Appellant should pay the Respondent damages calculated from the end of June 2000 as prayed for by him in his Plaintiff and not as from the 1<sup>st</sup> August 2012 as set out in the judgment.
14. The learned Trial Judge had set the date for calculation of damages payable by the Respondent to the Appellant as from the 1<sup>st</sup> August 2012 because it is on the 1<sup>st</sup> of August 2012 that SHDC had withdrawn or discontinued the suit *SHDC v/s Marie Claire VADIVELLO – C.S. No. 174/2000*, as a result of which all restriction, caution or inhibition prohibiting the registration of the transfer of the property to the Appellant had ceased to exist and made it possible for the Land Registrar to register and stamp the transfer document to transfer ownership and title of parcel H 2259 with the house standing thereon to the Respondent.
15. It is clear that registration of the transfer deed had not been effected as a result of a caution that had been registered at the instance of the SHDC against parcel H2259 on the 17<sup>th</sup> of May 2000, the very day the transfer documents were tendered for registration. There is no evidence to indicate as correctly stated by the Trial Judge that the Appellant had knowledge of the intended caution against parcel H 2259 and the court action in CS 174 of 2000 by SHDC against her at the time she entered into the sale agreement with the Respondent. We therefore agree with the Trial Judge when he states: “....In the absence of any evidence to the contrary I conclude that the continuation of the said action by the SHDC....till its withdrawal in August 2012 was not due to any blameworthy conduct on the part of the defendant (*Appellant*)....Hence, it is clear she was involved in litigation with the SHDC up to 1<sup>st</sup> August 2012 and the defendant (*Appellant*) could not have done much to have the land title H 2259 registered till the litigation was over. Hence, I am of



the view that there isn't sufficient evidence before court for me to conclude that the defendant has failed, refused or ignored to register the title deed with the land Registrar, as averred in paragraph 6 of the second amended plaint, till the case against her CS 174 of 2000 was withdrawn. However, referring again to the averments in paragraph 6 of the plaint I conclude that the defendant (*Appellant*) should have promptly taken steps to register the title deed once the case against her was withdrawn, but has failed, neglected or refused to do thereafter." Further a reading of the averments in paragraph 7 of the 2<sup>nd</sup> Amended Plaint referred to at paragraph 4 above shows that the Respondent's position therein had been, that the Appellant's obligation to transfer the property arose after the 1<sup>st</sup> of August 2012. We therefore dismiss the cross- appeal.

16. We therefore dismiss both the appeal and the cross appeal, award costs to the Respondent as against the Appellant and confirm the judgment of the Supreme Court.

A.Fernando (J.A)

**I concur:.** .....

S. Domah (J.A)

**I concur:** .....

J. Msoffe (J.A)

Signed, dated and delivered at Palais de Justice, Ile du Port on 21 April 2017